IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

1. **CRIMINAL WRIT PETITION NO.1723 OF 2006**

Mrs Darsana B Kharat,
Aged 20 years, residing at Kharat Chawl,
Room No.1, Utkarsha Mandal,
Azad Road, Andheir (East),
Mumbai-400 069 .. Petitioner
(wife of detenu)

Vs

1. Shri A.N.Roy,
Commissioner of Police for
Greater Bombay, Mumbai.

2. The State of Maharashtra,
through the Secretary,
Home Department (SPl),
Mantralaya, Mumbai -400 032.

3. The Superintendent
Nasik Road Central Prison,
Nasik.

4. The Secretary
Advisory Board,
Constituted u/s 9 of
MPDA Act, C/o: Home Dept,
(Special) Mantralaya,
Mumbai -400 032. .. Respondents

Mr U.N.Tripathi, for the petitioner.
Mr D.S.Mhaispurkar, APP, for the respondents

AND

2. **CRIMINAL WRIT PETITION NO.1724 OF 2006**

Mrs, Vaishali Benny Plakal,
Aged 28 years, residing at
Sheela Gopal Nair Chawl,
Room No.1, Malpa Dongri No.1,
Near Saibaba Ashram, Andheri (E),
Mumbai. .. Petitioner.
(Wife of detenu)

1. Shri A.N.Roy,

Commissioner of Police for
Greater Bombay, Mumbai.

2. The State of Maharashtra,
through the Secretary,
Home Department (SPl),
Mantralaya, Mumbai -400 032.

3. The Superintendent
Nasik Road Central Prison,
Nasik.

4. The Secretary
Advisory Board,
Constituted u/s 9 of
MPDA Act, C/o: Home Dept,
(Special) Mantralaya,
Mumbai -400 032. .. Respondents

Mr U.N.Tripathi, for the petitioner.
Mr B.R.Borulkar, APP, for the respondents

CORAM : SMT.RANJANA DESAI & D.B.BHOSALE,JJ.
DATED : 19th APRIL, 2007

ORAL JUDGMENT : (PER D.B.BHOSALE, J.)

1. The petitioners in these two writ petitions under Article 226 of the Constitution of India challenge the orders of detention, both dated 7.7.2006, passed by the Commissioner of Police, Brihan Mumbai, under section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (for short, "the said Act").

2. The grounds of detention on which the orders of detention are based upon, are common in both the

petitions though served on the detenus separately. In view thereof, we heard both these writ petitions together and they are being disposed of by this common judgment.

3. It appears that in pursuance of section 8 of the said Act read with Article 22(5) of the Constitution of India, the grounds of detention mentioned in paragraph 5 thereof were communicated to the detenus on the basis of which the detention orders were issued by the detaining authority under sub-section (2) of section 3 of the said Act. The detaining authority from the facts and the material placed before it and as reflected in the grounds of detention was subjectively satisfied that the detenus are dangerous persons as defined in section 2(b-1) of the said Act. It has been observed in the grounds of detention that the detenus are also weapon wielding desperado and thereby became perpetual and potential danger to the society at large. The detaining authority, on the basis of the material placed before it, has also recorded its subjective satisfaction that the detenus are acting in a manner prejudicial to the maintenance of public order. We are not making reference to the grounds mentioned in paragraph 5(b)(i) and 5(b)(ii) in detail since the learned counsel for the petitioner has challenged the orders of detention

only on one ground as reflected in para 5(h) of the petition. Though in the petitions the petitioners have raised some other grounds also, Mr Tripathi, learned counsel for the petitioner, fairly stated that he is pressing the challenge only on the ground (h). He did not argue any other ground. Ground (h) in Writ Petition no.1723 of 2006 and ground (k) in Writ Petition No.1724 of 2006 are identical. We deem it appropriate to reproduce the ground (h) in Writ Petition No.1723 of 2006, which reads thus:

> (h) The petitioner says and submits that the Medical Certificate of the associate Bala Kharat is obtained from medical authority on 6th June 2006 and the order of detention is passed on 7th June 2006. The Medico Legal document being a vital document has not been considered along with the proposal by the detaining authority. Hence, the detaining authority has considered extraneous material. The order of detention is illegal and bad-in-law, ought to be quashed and set aside."

Mr Tripathi, submitted that the medical certificate of the detenu in Writ Petition No.1723 of 2006 was obtained a day before the order of detention was passed. This medico legal document,according to Mr Tripathi, being a vital document, ought to have been considered by the detaining authority along with the proposal. The failure to consider this document clearly shows that the detaining authority considered

extraneous material and hence the order of detention is illegal and bad in law and deserves to be quashed and set aside.

4. We have perused the petition with its annextures as also the reply affidavits filed by the detailing authority as well as the sponsoring authority. The detaining authority in its reply affidavit dated 30.9.2006 has categorically stated that the medical certificate of Bala Kaharat, the detenu in Writ Petition No.1723 of 2005, was considered along with the proposal and has specifically denied that it has considered extraneous material. We find no reason to disbelieve the statement made in the affidavit, apart from the fact that on the date of the order the medical certificate was before the detailing authority. We find absolutely no merit in this ground. Merely because the medical certificate of Bala Kharat was obtained a day before the order of detention, which was passed on 7.6.2006, it would not be correct to say that it was not considered by the detaining authority along with the proposal and that the authority considered extraneous material and, therefore, the order of detention is illegal and bad in law. Considering a categoric denial of the allegation made by the detenu in the writ petition that the medical certificate of Bala Kharat was not considered, the submission of Mr

Tripathi, learned counsel for the petitioners, deserves to be rejected outright. Moreover, the fact remains that the said medical certificate was issued a day before the order of detention was passed which clearly indicates that the certificate was before the detaining authority on 7.6.2006 when the order was passed. We do not find that the order of detention is based on extraneous material. We are satisfied that there is sufficient material on record as reflected in the grounds of detention for passing the orders of detention with a view to prevent both the detenus from acting in any manner prejudicial to the maintenance of public order under section 3(2) of the said Act. In the circumstances, both these writ petitions are dismissed.

(Smt.Ranjana Desai, J.)

(D.B.Bhosale, J.)

HIGH COURT
CRIMINAL APPELLATE SIDE

CRI.WRIT PETITION NO.1723 OF 2006
AND
CRI.WRIT PETITION NO.1724 OF 2006

Date of Judgment:

19th APRIL, 2007

For approval and signature

THE HON'BLE SMT JUSTICE RANJANA DESAI.

THE HON'BLE MR.JUSTICE D.B.BHOSALE.

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad or Goa offices?